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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN VASQUEZ,

Defendant and Appellant.

A132091

(San Mateo County
Super. Ct. No. SC0711933B)

Pursuant to a negotiated disposition, defendant Juan Vasquez was sentenced to 10 years, four months in state prison. At the time of sentencing, the court awarded defendant credit for 420 actual days served, plus 62 days of local conduct credit, for a total of 482 days. On appeal, defendant challenges the calculation of the conduct credits, arguing that he was entitled to 63 days, rather than the 62 days awarded. As the People concede, defendant is correct. We therefore order the abstract of judgment amended to reflect 63 local conduct credits, for a total of 483 credits.

BACKGROUND

Defendant waived preliminary hearing and referral to probation for the preparation of a presentencing report. The record is therefore devoid of any facts pertaining to the incident that lead to the charges against defendant. Since the only issue before us concerns the calculation of credits, however, the factual background is not relevant. It is instead enough to note that defendant was charged with 18 counts and numerous enhancements, and ultimately pleaded no contest to two counts of robbery of an inhabited dwelling, one count of elder abuse, two counts of extortion, and one count of taking a

motor vehicle without the owner's permission. He also admitted that he was armed with a knife when he committed the robbery and extortion; that the victim in the elder abuse count was more than 70 years old and suffered great bodily injury; and that the two robbery counts were serious and violent felonies.

As noted, pursuant to a negotiated disposition, the court sentenced defendant to 10 years, four months in state prison. After imposing fines and fees, the court turned to credits for time served, and the following colloquy ensued:

“COUNSEL FOR DEFENDANT: I have got 420. 365 plus 55 for 420 and another 15 percent which is 63 for 483 total.

“PROBATION: That's correct.

“COUNSEL FOR DEFENDANT: 420 plus 63 good time/work time.

“COURT CLERK: It can't be an odd number.

“THE COURT: It has to be 62. So 482 credit for time served.”

Accordingly, the abstract of judgment reflected 420 actual credits and 62 local conduct credits, for a total of 482 credits.

Defendant timely appealed.

DISCUSSION

Penal Code section 2933.1, subdivision (c) provides: “Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement . . . shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).” Subdivision (a) then specifies that such a person includes “any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5” As defendant was convicted of a felony offense listed in section 667.5, his presentence custody credit was thus limited to no more than 15 percent of his actual period of confinement. (See *People v. Ramos* (1996) 50 Cal.App.4th 810, 817.) At the sentencing hearing, counsel for defendant correctly noted that the conduct credits equaled 63 days: 15 percent of 420.

The miscalculation apparently stemmed from the court clerk's mistaken belief that the “odd number” credit rule created by Penal Code section 4019 applied in this situation.

It did not because defendant's conduct credit was limited by section 2933.1 and was not calculated pursuant to section 4019.

DISPOSITION

The abstract of judgment is ordered amended to reflect 63 local conduct credits and 483 total credits.

Richman, J.

We concur:

Kline, P.J.

Lambden, J.